

**ORDINANCE NO. 1782**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING  
ORDINANCE NUMBER 1712, THE ZONING ORDINANCE (ZA-94-08).**

**WHEREAS**, the City of Milwaukie was a full participant in the creation of the Willamette River Corridor Coordination Plan; and

**WHEREAS**, the Planning Commission, and City Council have determined that while the Willamette River Coordination Plan lacks sufficient specificity of policy and detail to qualify as an ancillary document to the Milwaukie Comprehensive Plan, the proposed Model Greenway Ordinance, contained therein, should be incorporated into Milwaukie's Willamette Greenway Zone, Section 320 of the Zoning Ordinance; and

**WHEREAS**, the City of Milwaukie desires to protect, conserve, enhance and maintain the natural, scenic, historic, economic and recreational qualities of lands along the Willamette River in compliance with the State Land Use Goal 15 (Willamette River Greenway); and

**WHEREAS**, the Planning Commission held duly advertised public hearings on March 28, 1992 and April 25, 1992; and

**WHEREAS**, the City Council held a duly advertised public hearing on June 6, 1995;

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS  
FOLLOWS:**

Section 1. Findings. Findings of fact in support of this proposed amendment are as follows:

1. Zoning text amendments must meet the criteria of Section 904 and 905 of the City Zoning Ordinance. These criteria are addressed in subsequent findings.
2. Section 904.1.A. requires:

**Applicable requirements of Section 1003.**

Section 1003 requires a completed application and site plan. An application has been filed by the Community Development Department and is included in File ZA-94-08. Legislative text amendments do not require detailed site plans; however, a plat showing the portions of the City effected by this amendment is contained in the file.

3. Section 904.B. requires:

**Reasons for requesting the proposed text amendment.**

This amendment has been proposed at the request of the Clackamas County Department of Transportation and Development to implement the Model Willamette Greenway Ordinance contained in the Willamette River Corridor Coordination Plan.

4. Section 904.1.C. requires:

**Explanation of how the proposed text amendment is consistent with other provisions of this Ordinance.**

This amendment augments an existing section (Sec. 320) of the Zoning Ordinance. Careful attention has been made to insure that the amendment is consistent with the underlying zones, i.e. C-L, R-1-B, R-2, R-3, and R-5. The amendment is also consistent with the McLoughlin Corridor and Natural Resource Overlay Zones which are applicable in the same area, in that there are no conflicts between the provisions of these regulations and the proposed amendment.

5. Section 904.1.D. requires:

**Satisfaction of the approval criteria of Section 905.**

These criteria are satisfied in subsequent findings.

6. Section 905.1.A. requires:

**The proposed amendments must conform to applicable Comprehensive Plan goals, policies, and objectives and be consistent with the provisions of the City ordinances.**

The proposed amendment is consistent with the following objectives of the Willamette Greenway Element of the Comprehensive Plan:

Objective #3 - Land Use, in that the proposed amendment encourages the cooperation of public and private ownership to provide compatible uses within the Willamette Greenway and maintains the establishment of setbacks for non water-related and water-dependent uses on a case-by-case basis.

Objective #5 - Public Access and View Protection, in that the proposed amendment will provide, improve and maintain visual access both toward and away from the Willamette River.

Objective #6 - Maintenance of Private Property, in that the proposed amendment will not authorize unrestricted public use of private land.

The proposed amendment is consistent with the following objectives of the Open Spaces, Scenic Areas, and Natural Resources Element of the Comprehensive Plan:

Objective #2 - Natural Resource Area, in that the proposed amendment will serve to protect and preserve important natural habitats and vegetation.

Objective #3- Scenic Areas, in that the proposed amendment will serve to preserve significant scenic views for the enjoyment of the present and future City residents.

7. Section 905.1.B. requires:

**The anticipated development must meet the intent of the proposed zone.**

There is no development proposal associated with this amendment.

8. Section 905.1.C. requires:

**The proposal will meet or can be determined to reasonably meet applicable regional, State, or federal regulations.**

The proposed amendment is in compliance with the provisions of State Planning Goal #15. No other regional, State or federal regulations have been determined to be applicable.

9. Section 905.1.C. requires:

**Existing or planned public facilities and services can accommodate development anticipated as a result of this amendment.**

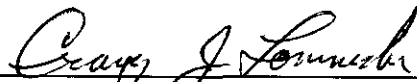
There is no development proposal associated with this amendment.

Section 2. Zoning Ordinance Text Amendment. The Zoning Ordinance text of Ordinance Number 1712 is amended as described in Exhibit A.

Read the first time on June 6, 1995 and moved to second reading by  
unanimous vote of the City Council.

Read the second time and adopted by the City Council on June 6, 1995.

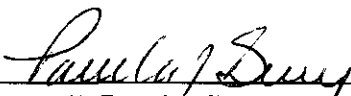
Signed by the Mayor on June 6, 1995.

  
Craig Lomnicki, Mayor

ATTEST:

  
Pat DuVal, City Recorder

Approved as to form:

  
O'Donnell, Ramis, Crew, Corrigan & Bachrach

ORDINANCE NO. 1782

ZA-94-08 Amendments to the  
Zoning Ordinance  
(6 pages)  
Redline = Proposed new text  
Strikeout = Proposed deleted text

**320 WILLAMETTE GREENWAY ZONE WG**

In a WG Zone, the following regulations shall apply:

**320.1 Purpose**

The purpose of the Willamette Greenway Zone is to protect, conserve, enhance and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River.

**320.2 Area defined**

The Willamette Greenway Zone is that area within the Willamette Greenway Plan Boundary identified on the Zoning Map. The WG Zone is in combination with the underlying zone.

**320.3 Limitations on use**

All uses land use actions and any change or intensification of use, or development permitted in the underlying zone, are conditional uses, subject to the provisions of Section 600.

**Prohibited uses:**

- A. Commercial, industrial, and residential structures and residential accessory structures exceeding 35 feet in height.
- B. Residential floating structures.
- C. New private noncommercial boathouses or storage structures, including temporary structures.
- D. New private noncommercial docks exceeding 400 square feet.
- E. Grading and tree cutting is prohibited in the buffer, except as allowed in subsections 320.8.B.1-6.

**320.4 Definitions**

- A. Change of use: Making a different use of the land or water which requires construction, alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures and which substantially alters or affects the land or water.
- B. Develop, Developing: Activities which result in removal of substantial amounts of vegetation or in the substantial alteration of natural site characteristics; e.g., to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, to create or terminate rights of access.
- C. Development: The act, process, or result of developing.

- D. Floodway: The channel of the River and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot (FEMA definition).
- E. Intensification: Any change of use, or action which increases or expands the area or amount of an existing use, or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure.
- F. Large trees: Trees with at least a 6-inch caliper at 5 feet of height.
- G. Native vegetation: Plant species indigenous to the Portland Metropolitan area, consisting of trees, shrubs, and ground cover, as identified in the Portland Plant List.
- H. Nonresidential floating structure: These are water-dependent or water-related structures, usually made of wood or concrete and containing a flotation system of polystyrene or similar materials, that ride on the river surface anchored either by a cable to the river bed, to piling, or to the riverbank for uses including, but not limited to: public walks or river access not associated with marina or moorage; water-ski jumps; swimmer's resting platform; storage of marine-related equipment or boat storage; or boat fueling facility. Sometimes fully enclosed buildings are situated atop the floating structure. Restaurants, snack bars and the like are included in this definition.
- I. Ordinary high water line: The line on the bank or shore to which the water ordinarily rises annually. Ordinary high water shall be established by the Division of State Lands (DSL) with reference to historical data, vegetation, field observations, survey, or other generally accepted methods.
- J. Public access: Facilities that enable the public to safely make physical contact with the River and its environs.
- K. Residential floating structure (houseboat or floating home): Single or multiple family dwellings supported on the River by a flotation system, which may include a system of piles, berths, walkways, and ramps. This is not a water-dependent or water-related use.
- L. Riparian: Related to, living, or located on the bank of a waterway.
- M. Water-dependent: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production, or source of water.

- N. Water-related: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.
- O. Riverbank: A land feature or constructed structure that serves to contain the waters of the River. It can be distinguished from upland areas by the presence of riparian vegetation in close proximity to flowing water. Usually the riverbank represents the limits of seasonal high water and periodic flood waters.
- P. Security: Any form of surety approved by the City Attorney, including, but not limited to: performance bond, letter of credit, or cash escrow account.
- Q. View window: An area of unobstructed view. The width of a view window shall be measured at the point where vegetation is removed.

**320.4**

**320.5 Procedures**

The following procedures shall govern the application of WG Zones:

- A. In the WG Zone all uses and their accessory uses are permitted subject to the provisions of Section 600.
- B. The Oregon Department of Transportation shall be notified according to the provision of subsection 1011.3.D.
- C. The provisions of the WG Zone in Section 320 shall apply until adoption of the Willamette Greenway Design Plan.
- D. A Greenway conditional use is required for all intensification or change of use, or alteration of the vegetation buffer area, or development, as defined in this Ordinance. Approval shall be granted only if the criteria in subsection 320.6 are met.
- E. Submittal requirements: A Vegetation/Buffer Plan must be submitted for each application for a Greenway conditional use permit.
- F. Written notice, including a copy of the application, will be sent upon receipt to the Oregon Parks and Recreation Department by certified mail - return receipt requested. The Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board shall also be notified of each application.
- G. Written notice shall be provided to the Oregon Division of State Lands after the land use action is final for activities affecting wetlands or submerged or submersible lands within the Willamette River Greenway. The notice shall include local government conditions of approval.

**320.5**

**320.6 Criteria**

The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan.
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the River.
- C. Protection of views both toward and away from the River.
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the River, to the maximum extent practicable.
- E. Public access to and along the River, to the greatest possible degree, by appropriate legal means.
- F. Emphasis on water-oriented and recreational uses.
- G. Maintain and or increase views between the Willamette River and downtown.
- H. Protection of the natural environment according to regulations in the ~~Environmental Protection Ordinance~~ Natural Resource Overlay Zone.
- I. Advice and recommendations of the Design Review Committee, as appropriate.
- J. Conformance to applicable Comprehensive Plan policies.
- K. The request is consistent with applicable plans and programs of the Division of State Lands.
- L. A Vegetation Buffer Plan meeting the conditions of subsection 320.8.A-C.

**320.6**

**320.7 Setbacks**

On a case-by-case basis, uses that are not water-dependent or water-related shall be evaluated according to criteria of subsection 320.56 above so that they are directed away from the River. Existing and proposed uses that are water-dependent and water-oriented may be permitted near or at the water's edge subject to review of criteria in subsection 320.56 above.

**320.8 Vegetation buffer requirements**

- A. A buffer strip of native vegetation shall be identified along the River, which shall include the land area between the River and a location 25 feet upland from the ordinary high water line. This area shall be preserved, enhanced, or reestablished, except for development otherwise allowed in this Ordinance, and subject to the requirements of subsection 320.8.B below.



- B. Prior to development (e.g., removal of substantial amounts of vegetation or alteration of natural site characteristics) within the buffer, a Vegetation Buffer Plan for the buffer area shall be submitted for review and approval. The plan shall address the following areas and is subject to the following requirements:
1. Riverbank stabilization. The plan shall identify areas of riverbank erosion, and provide for stabilization. Bioengineering methods for erosion control shall be used when possible. When other forms of bank stabilization are used, pocket plantings or other means shall be used to provide vegetative cover.
  2. Scenic view protection (screening). The plan shall identify the impact of the removal or disturbance of vegetation on scenic views from the River, public parks, public trails, and designed public overlooks.
  3. Retain existing native vegetation and large trees. The plan shall provide for the retention of existing large trees and existing native vegetation, including small trees, ground covers, and shrubs, within the vegetation buffer area. Removal of native vegetation and large trees is allowed pursuant to the following standards:
    - a. Large trees that are diseased, dead, or in danger of falling down may be removed if there is a clear public safety hazard or potential for property damage.
    - b. Grading or tree removal is allowed in conjunction with establishing a permitted use. Only the area necessary to accommodate the permitted use shall be altered.
    - c. Tree and vegetation removal may be allowed to create one view window from the primary residential structure to the River when suitable views cannot be achieved through pruning or other methods. The width of a view window may not exceed 100 feet or 50% of lineal waterfront footage, whichever is lesser. The applicant must clearly demonstrate the need for removal of trees and vegetation for this purpose.
  4. Restore native vegetation. The plan shall provide for restoring lands within the buffer area which have been cleared of vegetation during construction with native vegetation.
  5. Enhance vegetation buffer area. The plan may provide for enhancing lands within the buffer area. Regular pruning and maintenance of native vegetation shall be allowed. Vegetation that is not native, except large trees, may be removed. New plant materials in the buffer strip shall be native vegetation.
  6. Security that the plan will be carried out. The approved vegetation buffer shall be established, or secured, prior to the issuance of any permit for development.

- C. The vegetation buffer requirements shall not preclude ordinary pruning and maintenance of vegetation in the buffer strip.

**320.9 Private noncommercial docks**

Private noncommercial docks are subject to the following requirements:

- A. Only one dock is allowed per riverfront lot of record.
- B. In areas designated as Open Water Areas or Special Management Areas by the Division of State Lands, docks may be restricted or additional requirements may be applied to docks. Restrictions or additional requirements will be identified by DSL in their review of the development application.
- C. Private noncommercial docks shall not exceed 400 square feet (square footage is measured as the width times the length of the outer edge of the structure), with the following exceptions:
1. Legal nonconforming docks or boathouses.
  2. Nonconforming structures may be altered or replaced pursuant to Section 800.
- D. Docks, pilings, and walkways shall either be dark natural wood colors, or painted dark earthtones (dark brown or green).
- E. Private noncommercial docks shall not:
1. Restrict boat access to adjacent properties.
  2. Interfere with the commercial navigational use of the River, including transiting, turning, passing, and berthing movements.
  3. Interfere with critical fish and wildlife habitat or fishing use of the River as determined by Oregon Department of Fish and Wildlife.
  4. Significantly add to recreational boating congestion.

**320.7**

**320.10 Greenway Design Plan**

The WG Zone is intended to be temporary and will be replaced by the Willamette Greenway Design Plan when it is completed. The Willamette Greenway Design Plan is identified in the Comprehensive Plan of the City.